

## II. REMARKS

The Examiner is requested to reconsider the application in view of the amendment, which is intended to use less functional language, and is not directed to prior art. It is believed that no new matter has been added.

All claims have been rejected pursuant to 35 U.S.C. Sec. 103 for reasons stated in the Office Action. The new Office Action does not respond to any argument presented in the Appeal Brief. 35 U.S.C. Sec. 132 requires “the reasons for such rejection... *together with such information as may be useful in judging the propriety of continuing prosecution....*” For failing to respond to any argument raised in the Appeal Brief, pursuant to Sec. 132, the rejection is improper in total; Applicant maintains the positions in the Appeal Brief.

In the reconsideration, the Applicant wishes to make of record the enclosed standard definitions from Black’s Law Dictionary.

Generally, a first conceptual distinction has to do with the notion of owning property versus leasing it. If one owns a lease, does that person own the property? Answer: No. There is a key difference between owning property and owning a lease: a lease is less than an ownership interest in the property.

Compare Black’s Law dictionary definitions of “property” and “lease.” “Property” includes “1. ... ownership,” including the right to possession in a legal sense. A “lease” is defined as “1. A contract by which a rightful possessor of real property conveys the right to use and occupy the property in exchange for consideration...” Thus, when an owner grants a lease, there is no decomposition the property, e.g., because the owner of the property is the same before and after the lease.

How many property rights must exist after a decomposition of property? Answer: more than one, otherwise the property has not been decomposed.

With even greater precision now, the claims require decomposing property into

interests that include “a remainder interest.”

Blacks Law defines a “remainder” as “a future interest arising in a third person...who is intended to take after the natural termination of the preceding estate.” See also “remainder interest.”

Blacks Law defines an “interest” as “2. a legal share in something; all or part of a legal or equitable claim to or right in property <right, title, and interest>

An “estate” is defined as “The amount, degree, nature, and quality of a person’s interest in land or property.”

Therefore a “remainder interest” is a future legal share in property arising in a third person who is intended to take after the natural termination of the preceding estate. And as per the definition of “property,” the remainder interest is an ownership interest.

Compare this with the definition of a “lease,” which falls short of an owning an interest in the property.

Therefore, if one has decomposed the property to produce a remainder interest (i.e., a future interest), there must be some other ownership interest (e.g., a present interest).

Blacks Law defines an “estate for years” in a circuitous manner, but follow along as the definition points to “See *tenancy for a term* under TENANCY.”

Blacks Law defines “tenancy” in 3 definitions that allow the possibility of a lease (Definition 1) or ownership (Definition 3). Blacks Law defines a “tenancy for a term” as “a tenancy whose duration is known in years, weeks, or days from the moment of its creation - also termed... “estate for years”

Remember that a lease is not an ownership interest in the property. So if the claims require decomposing property into a remainder interest and an estate for years, for them both to be of property, the “estate for years” part cannot mean a lease. It is instead the “present interest.” See Black’s Law Dictionary.

So rather than decompose property into a remainder interest and a lease (one of several possible definitions of an “estate for years”) and the meaning must be definition 3 in Blacks Law, i.e., an ownership interest.

Now consider the prior art: Blacks Law Dictionary mentions a “remainder interest” and an “estate for years,” which are of course old interests in property law that by their very definition come about by being decomposed property. A market-based system for valuing them has not been shown to be old.

Turn now to the Graff article, which generally deals with financing ownership by a combination of a master lease and a mortgage. As to any transaction carried out in accordance with the Graff article, there is no change of ownership. The Graff article does disclose decomposing of property benefits, but not a temporal decomposition of the property, again because the same owner owns the property throughout the transaction in the Graff article. To decompose the property, one must break up ownership somehow, and the transaction in the Graff article does not do so, let alone find a way to value such corresponding components.

In the context of a “lease portfolio holder,” the Graff article mentions “fee simple property ownership is separated temporally into term and residual property ownership, with term ownership running until existing leases expire and residual ownership commencing when the leases expire” at page 53, second column, lines 21-25. This is nothing more than routine property law, as mentioned above. But the Graff statement is set in a context that must be considered too. The Graff article goes on to state (in the following lines 28-35) that “the functional equivalent of term ownership can readily be created in a single-tenant property by an appropriate form of master lease on the facility coincident with the term of the existing lease. The term owner is the holder of the master lease; the residual equity holder is the legal owner of the property while the master lease is in force.” This sentence makes it clear that the Graff article is not discussing a valuation of components decomposed from property and instead is

dealing with a master lease and a mortgage transaction.

With regard to "functional equivalent" stated in the article, the meaning is not entirely clear as it all depends on the function, but whatever that function might be, it is not in the valuation. Leases and property interests are valued differently at least because they are taxed differently (tax authority can be provided if desired).

Turn now to the rejection: if Graff article disclosed how to do a market based valuation of a remainder interest and an estate for years, then it must be possible to actually do so from the article. Imagine that a person has a child, a grand child, and a million dollar home. The person decomposes the property into an estate for 30 years to the child with the remainder to the grand child. Using the techniques in the Graff article, perform a market-based valuation of the remainder interest: how much is the grand child's remainder interest worth? No one can answer this question using the techniques in the Graff article.

So in sum, the Graff article does not enable, teach, or suggest any means for producing:

...a separate market-based valuation of each of a plurality of components temporally decomposed from the property, the components including an estate for years interest and a remainder interest....

(Compare this with other independent claims.)

And while the property interests were known, a means for valuing them has not been shown in the prior art.

### **III. CONCLUSION**

#### **APPLICANT CLAIMS SMALL ENTITY STATUS.**

Generally, it is believed that the amendment adds no new matter, and the amendment corrects typographical errors and similar mistakes that were recently discovered. Otherwise, no prosecution issue is raised by the amendment. The Examiner is requested to

reconsider the application and proceed with issuance in view of the foregoing amendment.

The Commissioner is hereby authorized to charge any fees associated with the above-identified patent application or credit any overcharges to Deposit Account No. 50-0235.

Please direct all correspondence to the undersigned at the address given below.

Respectfully submitted,



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term." 1 George Crompton, *Practice Common-Placed: Rules and Cases of Practice in the Courts of King's Bench and Common Pleas* liv (3d ed. 1787).

**essoin**, *vb.* [fr. Old French *essoing*nier "to excuse"] *Hist.* To present an excuse for not appearing in court as ordered.

"Upon the summons, the defendant either appeared, or *essoigned*, or made default. If he did the former, the plaintiff declared against him, and the cause was proceeded in by the court; and if he did the latter, the plaintiff had liberty to take out further process against him. But if he *essoigned*, that is, sent an excuse to the court why he could not attend, he was to send it by the *return day of the writ* which if he did, a further process did not issue against him." 1 George Crompton, *Practice Common-Placed: Rules and Cases of Practice in the Courts of King's Bench and Common Pleas* liv (3d ed. 1787).

**essoin day**. *Hist. English law.* The first general return day of the term, when the courts sat to receive essoins. • By the Law Terms Act (1830), essoin days were eliminated as a part of the term. St. 11 Geo. 4; 1 Will. 4, ch. 70, § 6.

**essoin de malo villae** (dee mal-oh vil-ee). *Hist.* A procedure by which a defendant, who was in court the first day but was then taken ill without pleading, would send two essoiners to state in court that the defendant was detained by sickness in a particular village and thus unable to attend. • This essoin would be accepted unless the plaintiff could show its falsity.

**essoiner** (e-soyn-er), *n. Hist.* A person making an essoin. — Also termed *essoiniator* (e-soyn-ee-ay-tor).

**essoin roll**. *Hist.* A roll upon which essoins were entered, together with the day to which they were adjourned.

**establish**, *vb.* 1. To settle, make, or fix firmly; to enact permanently <one object of the Constitution was to establish justice>. 2. To make or form; to bring about or into existence <Congress has the power to establish Article III courts>. 3. To prove; to convince <the House managers tried to establish the President's guilt>.

**established royalty**. See ROYALTY (1).

**establishment**, *n.* 1. The act of establishing; the state or condition of being established. 2. An institution or place of business. 3. A group of people who are in power or who control or exercise great influence over something.

**Establishment Clause**. The First Amendment provision that prohibits the federal and state governments from establishing an official religion, or from favoring or disfavoring one view of religion over another. U.S. Const. amend. I. Cf. FREE EXERCISE CLAUSE. [Cases: Constitutional Law 84. C.J.S. *Constitutional Law* §§ 513-517.]

**estadal** (es-tah-dahl), *n. [Spanish] Hist.* In Spanish America, a measure of land of 16 square varas, or yards.

**estadia** (es-tah-dee-ah), *n. [Spanish] Spanish law.* 1. A delay in a voyage, or in the delivery of cargo, caused by the charterer or consignee, who becomes liable for demurrage. 2. The time for which the party who has chartered a vessel, or is bound to receive the cargo, must pay demurrage because of a delay in

performing the contract. — Also termed *sobrestadia* (soh-bray-stah-dee-ah).

**estandard** (e-stan-dard), *n. [Law French]* A standard of weights and measures.

**est a savoir** (ay ah skah-vwahr). [Law French, prob. fr. Latin *est sciendum* "it is to be known"] It is to be understood or known; to wit. • This expression is common in Sir Thomas de Littleton's 15th-century *Treatise on Tenures*, written in Law French. See SCIENDUM EST.

**estate**. 1. The amount, degree, nature, and quality of a person's interest in land or other property; esp., a real-estate interest that may become possessory, the ownership being measured in terms of duration. See periodic tenancy under TENANCY.

"The word 'estate' was probably adopted because in early days it was possible to ascertain a man's status or position in life by discovering the particular kind of tenure by which he held his lands. The *quality* of his tenure gave a clue to his status. The baron for example ought in theory to be the holder of a barony; he has the status of a baron because he has the estate of a baron.... [O]ne of the distinguishing marks of [the] freehold estates was the uncertainty of their duration. They were invariably held either for life, or for some other space of time dependent upon an event which might not happen within a lifetime, and thus a freehold estate came to be regarded as one which involved the performance of free services only, but as one which endured for an uncertain time. In this way, the word 'estate' came to denote the *quantity* of a man's interest in land." G.C. Cheshire, *Modern Law of Real Property* 26 (3d ed. 1933).

**absolute estate**. A full and complete estate that cannot be defeated.

"The epithet *absolute* is used to distinguish an estate extended to any given time, without any condition to defeat or collateral limitation to determine [i.e., terminate] the estate in the mean time, from an estate subject to a condition or collateral limitation. The term *absolute* is of the same signification with the word *pure* or *simple*, a word which expresses that the estate is not determinable by any event besides the event marked by the clause of limitation." G.C. Cheshire, *Modern Law of Real Property* 54 (3d ed. 1933).

**ancestral estate**. An estate that is acquired by descent or by operation of law with no other consideration than that of blood.

**bankruptcy estate**. See BANKRUPTCY ESTATE.

**base estate**. *Hist.* An estate held at the will of the lord, as distinguished from a freehold.

**concurrent estate**. Ownership or possession of property by two or more persons at the same time. • In modern practice, there are three types of concurrent estates: tenancy in common, joint tenancy, and tenancy by the entirety. — Also termed *concurrent interest*.

"A concurrent estate is simply an estate — whether present or future, defeasible or non-defeasible, in fee simple, in tail for life, or for years — that is owned by two or more persons at the same time. O transfers 'to A and B and their heirs.' A and B own a present concurrent estate in fee simple absolute." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 53 (2d ed. 1984).

**conditional estate**. See *estate on condition*.

**contingent estate**. An estate that vests only if certain event does or does not happen. Cf. *estate on condition*.

**defeasible estate.** An estate that may come to an end before its maximum duration has run because of the operation of a special limitation, a condition subsequent, or an executory limitation. • If an estate is defeasible by operation of a special limitation, it is called a *determinable estate*.

**derivative estate.** A particular interest that has been carved out of another, larger estate. Cf. *original estate*.

**determinable estate.** An estate that is defeasible by operation of a special limitation. — Also termed *determinable freehold*.

**equitable estate.** An estate recognized in equity, such as a trust beneficiary's interest. See *EQUITY*.

"[A] legal estate was a right *in rem*, an equitable estate a right *in personam*, that is to say, the former conferred a right enforceable against the whole world, the latter one which could be enforced only against a limited number of persons." G.C. Cheshire, *Modern Law of Real Property* 54 (3d ed. 1933).

**estate ad remanentiam** (ad rem-a-nen-shee-əm). An estate in fee simple.

**estate at sufferance.** See *tenancy at sufferance* under *TENANCY*.

**estate at will.** See *tenancy at will* under *TENANCY*.

**estate by curtesy.** An estate owned by a wife, to which the husband is entitled upon her death. See *CURTESY*.

**estate by elegit.** An estate held by a judgment creditor, entitling the creditor to the rents and profits from land owned by the debtor until the debt is paid. See *ELEGIT*.

**estate by entirety.** A common-law estate in which each spouse is seized of the whole of the property. • An estate by entirety is based on the legal fiction that a husband and wife are a single unit. The estate consists of five unities: time, title, interest, possession, and marriage. The last of these unities distinguishes the estate by entirety from the joint tenancy. A joint tenancy can exist with any number of persons, while an estate by entirety can be held only by a husband and wife and is not available to any other persons. And it can be acquired only during the marriage. This estate has a right of survivorship, but upon the death of one spouse, the surviving spouse retains the entire interest rather than acquiring the decedent's interest. Most jurisdictions have abolished this estate. — Also termed *estate by the entirety*; *estate by entirieties*; *estate by the entirieties*; *tenancy by the entirety*; *tenancy by the entirieties*. Cf. *joint tenancy* and *tenancy in common* under *TENANCY*.

**estate by purchase.** An estate acquired in any manner other than by descent. See *PURCHASE*.

**estate by statute staple.** An estate in a defendant's land held by a creditor under the statute staple until the debt was paid. See *STATUTE STAPLE*.

**estate by the courtesy of England.** See *CURTESY*.

**estate for a term.** See *tenancy for a term* under *TENANCY*.

**estate for life.** See *life estate*.

**estate for years.** See *tenancy for a term* under *TENANCY*.

**estate in common.** See *tenancy in common* under *TENANCY*.

**estate in fee simple.** See *fee simple*.

**estate in fee tail.** See *fee tail*.

**estate in gage.** An estate that has been pledged as security for a debt. See *MORTGAGE*.

**estate in partnership.** A joint estate that is vested in the members of a partnership when real estate is purchased with partnership funds and for partnership purposes. [Cases: *Partnership* 76. C.J.S. *Partnership* §§ 86-87.]

**estate in possession.** An estate in which a present interest passes to the tenant; an estate in which the tenant is entitled to receive the rents and other profits arising from the estate. [Cases: *Estates in Property* 1. C.J.S. *Estates* §§ 2-5, 8, 15-21, 116-128, 137, 243.]

**estate in reversion.** See *REVERSION*.

**estate in severalty** (sev-a-rel-tee). An estate held by a tenant separately, without any other person being joined or connected in interest.

**estate in tail.** See *fee tail*.

**estate in vadio** (in vad-ee-oh). An estate in gage or pledge. See *MORTGAGE*.

**estate less than freehold.** An estate for years, an estate at will, or an estate at sufferance.

**estate of inheritance.** An estate that may descend to heirs.

**estate on condition.** An estate that vests, is modified, or is defeated upon the occurrence or nonoccurrence of some specified event. • While an estate on limitation can revert without any action by the grantor or the grantor's heirs, an estate on condition requires the entry of the grantor or the grantor's heirs to end the estate whenever the condition occurs. — Also termed *estate on conditional limitation; conditional estate*.

**estate on conditional limitation.** See *estate on condition*.

**estate on condition expressed.** A contingent estate in which the condition upon which the estate will fail is stated explicitly in the granting instrument.

**estate on condition implied.** A contingent estate having some condition that is so inseparable from the estate's essence that it need not be expressed in words.

**estate on limitation.** An estate that automatically reverts back to the grantor according to a provision, usu. regarding the passage of a determined time period, designated by words such as "during," "while," and "as long as." See *fee simple determinable* under *fee simple*.

**estate pur autre vie.** See *life estate pur autre vie*.

**estate tail.** See *fee tail*.

**estate tail quasi.** An estate granted by a life tenant, who, despite using language of conveyance that is

**interdict** (in-tər-dikt), *vb.* 1. To forbid or restrain. 2. To intercept and seize (contraband, etc.). 3. *Civil law.* To remove a person's right to handle personal affairs because of mental incapacity. [Cases: Mental Health 36. C.J.S. *Insane Persons* §§ 49-52.]

**interdiction.** 1. The act of forbidding or restraining.

*interdiction of commercial intercourse.* *Int'l law.* A governmental prohibition of commercial trade.

2. The interception and seizure of something, esp. contraband. 3. *Civil law.* The act of depriving a person of the right to handle his or her own affairs because of mental incapacity. See EX CAPITE INTERDICTIONIS. Cf. GUARDIANSHIP (1); CURATORSHIP; CURATOR (2).

"Interdiction, now scarcely known in practice, was a means formerly adopted for the protection of those who were weak, facile, and easily imposed upon, and also for the protection of those who, being reckless and profuse, were unable to manage their estate with care and prudence. Interdiction was either judicial or voluntary: and in whichever of these modes the interdiction was effected and imposed, any disposition of heritage thereafter by the interdicted, without the consent of his interdictors, was liable to reduction on the ground of interdiction, except where the conveyances were onerous and rational." John Trayner, *Trayner's Latin Maxims* 193 (4th ed. 1894).

*complete interdiction.* See full interdiction.

*full interdiction.* The complete removal of one's right to care for oneself and one's affairs or estate because of mental incapacity. La. Civ. Code art. 389. — Also termed *complete interdiction*. [Cases: Mental Health 36. C.J.S. *Insane Persons* §§ 49-52.]

*limited interdiction.* See partial interdiction.

*partial interdiction.* The partial removal of one's right to care for oneself and one's affairs or estate because of mental incapacity. — Also termed *limited interdiction*. [Cases: Mental Health 36. C.J.S. *Insane Persons* §§ 49-52.]

**interdictory** (in-tər-dik-tər-ee), *adj.* 1. Of or relating to an interdiction. 2. Having the power to interdict. — Also termed *interdictive*.

**interdictum** (in-tər-dik-təm), *n.* [Latin] *Roman law.* A summary order to secure the applicant's rights by preventing something from being done (prohibitory interdict) or requiring property to be produced (exhibitory interdict) or restored (restitutory interdict). • A party might apply for an *interdictum* when some wrong had been done, or was likely to be done, and it was necessary either to redress or to prevent the wrong at once, without waiting for the ordinary legal processes; often it was a preliminary to an ordinary action (e.g., by settling which party was entitled to be defendant in the action). Pl. *interdicta*.

**interdictum quod vi aut clam** (in-tər-dik-təm kwod vi awt clam). [Latin "interdict because of force or stealth"] *Roman law.* An interdict issued against a person who forcibly (*vi*) or secretly (*clam*) altered or occupied the claimant's property. • The interdict required the defendant to restore the property to its previous condition. Cf. *actio vi bonorum raptorum* under ACTIO.

**inter eosdem** (in-tər ee-ahs-dəm). [Latin] *Hist.* Between the same persons.

**interesse** (in-tər-es-ee). [Latin] 1. Monetary interest. 2. A legal interest in property.

**interessee** (in-tə-re-see). See *real party in interest* under PARTY (2).

**interesse termini** (in-tər-es-ee tər-mə-ni). [Latin "interest of term or end"] *Archaic.* A lessee's right of entry onto the leased property; esp., a lessee's interest in real property before taking possession. • An *interesse termini* is not an estate; it is an interest for the term. It gives the lessee a claim against any person who prevents the lessee from entering or accepting delivery of the property.

"[The *interesse termini*'s] essential qualities, as a mere interest, in contradistinction to a term in possession, seems to arise from a want of possession. It is a right or interest only, and not an estate, and it has the properties of a right. It may be extinguished by a release to the lessor, and it may be assigned or granted away, but it cannot, technically considered, be surrendered; for there is no reversion before entry, in which the interest may drown. Nor will a release from the lessor operate by way of enlargement, for the lessee has no estate before entry." 4 James Kent, *Commentaries on American Law* \*97 (George Comstock ed., 11th ed. 1866).

"There was a troublesome doctrine of the common law which established, in the case of a lease not operating under the Statute of Uses, that the lessee acquired no estate in the land until he actually entered into possession. Until that time he was said to have a mere right to take possession, and this right was called an *interesse termini*. This requisite of entry to perfect a lease has, however, been swept away by the Law of Property Act, 1925, and all terms of years absolute, whether created before or after the commencement of the Act, can take effect from the date fixed for the commencement of the term without actual entry." G.C. Cheshire, *Modern Law of Real Property* 128-29 (3d ed. 1933).

**interest**, *n.* 1. The object of any human desire; esp., advantage or profit of a financial nature <conflict of interest>. 2. A legal share in something; all or part of a legal or equitable claim to or right in property <right, title, and interest>. • Collectively, the word includes any aggregation of rights, privileges, powers, and immunities; distributively, it refers to any one right, privilege, power, or immunity.

**absolute interest.** An interest that is not subject to any condition.

**beneficial interest.** A right or expectancy in something (such as a trust or an estate), as opposed to legal title to that thing. • For example, a person with a beneficial interest in a trust receives income from the trust but does not hold legal title to the trust property. [Cases: Descent and Distribution 68-81; Trusts 1. C.J.S. *Descent and Distribution* §§ 68-71, 73-77, 82-88, 116; *Trover and Conversion* §§ 1-9, 14-18.]

**concurrent interest.** See *concurrent estate* under ESTATE (1).

**contingent interest.** An interest that the holder may enjoy only upon the occurrence of a condition precedent.

**controlling interest.** Sufficient ownership of stock in a company to control policy and management esp., a greater-than-50% ownership interest in an enterprise. [Cases: Corporations 180. C.J.S. *Corporations* §§ 327-330.]

**defeasible interest.** An interest that the holder may enjoy until the occurrence of a condition.

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that any leads not investigated are true and exonerating. [Cases: Internal Revenue 5312.]

**league.** 1. A covenant made by nations, groups, or individuals for promoting common interests or ensuring mutual protection. 2. An alliance or association of nations, groups, or individuals formed by such a covenant. 3. A unit of distance, usu. measuring about three miles (chiefly, nautical). [Cases: Weights and Measures 3. C.J.S. *Weights and Measures* § 3.]

**marine league.** A geographical measure of distance equal to one-twentieth part of a degree of latitude, or three nautical miles. [Cases: Weights and Measures 3. C.J.S. *Weights and Measures* § 3.]

**League of Nations.** An organization of nations formed in 1919 to promote international cooperation and peace. • President Woodrow Wilson endorsed the League in an address to Congress, but the United States never joined. The League dissolved in 1946 and turned its assets over to the United Nations.

**leakage.** 1. The waste of a liquid caused by its leaking from a storage container. 2. An allowance against duties granted by customs to an importer of liquids for losses sustained by this waste. 3. *Intellectual property.* Loss in value of a piece of intellectual property because of unauthorized copying. • The types of intellectual property most susceptible to leakage are recordable media such as compact discs and videotapes. [Cases: Copyrights and Intellectual Property 87(1). C.J.S. *Copyrights and Intellectual Property* §§ 77, 79.]

**leal (leel), adj.** [Law French] *Hist.* Loyal.

**lean, vb.** 1. To incline or tend in opinion or preference. • A court is sometimes said to "lean toward" or "lean against" an advocate's position, meaning that the court regards that position favorably or unfavorably. 2. To yield; to submit.

**leapfrog development.** An improvement of land that requires the extension of public facilities from their current stopping point, through undeveloped land that may be scheduled for future development, to the site of the improvement.

**learned (lər-nid), adj.** 1. Having a great deal of learning; erudite. • A lawyer might refer to an adversary as a "learned colleague" or "learned opponent" — a comment that, depending on the situation and tone of voice, may be either a genuine compliment or a sarcastic slight. 2. Well versed in the law and its history. • Statutes sometimes require that judges be "learned in the law," a phrase commonly construed as meaning that they must have earned a law degree and been admitted to the bar.

**learned intermediary.** See *informed intermediary* under INTERMEDIARY.

**learned-intermediary doctrine.** The principle that a prescription-drug manufacturer fulfills its duty to warn of a drug's potentially harmful effects by informing the prescribing physician, rather than the end-user, of those effects. [Cases: Products Liability 46. C.J.S. *Products Liability* § 54.]

**learned-treatise rule. Evidence.** An exception to the hearsay rule, by which a published text may be

established as authoritative, either by expert testimony or by judicial notice. • Under the Federal Rules of Evidence, a statement contained in a published treatise, periodical, or pamphlet on sciences or arts (such as history and medicine) can be established as authoritative — and thereby admitted into evidence for the purpose of examining or cross-examining an expert witness — by expert testimony or by the court's taking judicial notice of the authoritative nature or reliability of the text. If the statement is admitted into evidence, it may be read into the trial record, but it may not be received as an exhibit. Fed. R. Evid. 803(18). [Cases: Criminal Law 439; Evidence 363. C.J.S. *Criminal Law* §§ 1032, 1038; *Evidence* §§ 1005-1006.]

**learning, n.** 1. *Hist.* Legal doctrine. 2. The act of acquiring knowledge.

**lease, n.** 1. A contract by which a rightful possessor of real property conveys the right to use and occupy the property in exchange for consideration, usu. rent. • The lease term can be for life, for a fixed period, or for a period terminable at will. [Cases: Landlord and Tenant 20. C.J.S. *Landlord and Tenant* §§ 27, 202(1, 2, 3, 4, 5, 9, 10), 203.] 2. Such a conveyance plus all covenants attached to it. 3. The written instrument memorializing such a conveyance and its covenants. — Also termed *lease agreement*; *lease contract*. 4. The piece of real property so conveyed. 5. A contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration. [Cases: Bailment 1. C.J.S. *Bailments* §§ 2-13, 15, 19, 22-24, 31.]

**assignable lease.** A lease that the lessee can transfer to a successor. See SUBLEASE. [Cases: Landlord and Tenant 74. C.J.S. *Landlord and Tenant* §§ 30, 53.]

**building lease.** A long-term lease of land that includes a covenant to erect or alter a building or other improvement. Cf. *ground lease*.

**capital lease.** See LEASE-PURCHASE AGREEMENT.

**commercial lease.** A lease for business purposes. [Cases: Landlord and Tenant 20. C.J.S. *Landlord and Tenant* §§ 27, 202(1, 2, 3, 4, 5, 9, 10), 203.]

**community lease.** A lease in which a number of lessors owning interests in separate tracts execute a lease in favor of a single lessee.

**concurrent lease.** A lease that begins before a previous lease ends, entitling the new lessee to be paid all rents that accrue on the previous lease after the new lease begins, and to remedies against the holding tenant.

"A landlord who has granted a lease may nevertheless grant another lease of the same land for all or some of the period of the first lease. The second lease does not deprive the lessee under the first lease of the right to possession of the property, but is, in reality, a lease of the reversion. Because the two leases operate concurrently during at least some part of their respective durations, they are known as 'concurrent leases.'" Peter Butt, *Land Law* 233 (2d ed. 1988).

**consumer lease.** 1. A lease of goods by a person who is in the business of selling or leasing a product primarily for the lessee's personal or household use. UCC § 2A-103(1)(e). [Cases: Bail-

Insurance 3164. C.J.S. *Insurance* §§ 1280, 1316, 1627.]

**proof of service.** 1. A document filed (as by a sheriff) in court as evidence that process has been successfully served on a party. — Also termed *return of service*; *return of process*. See SERVICE (1). [Cases: Federal Civil Procedure 511-518; Process 127-150. C.J.S. *Process* §§ 77-91.] 2. CERTIFICATE OF SERVICE.

**proof of will.** See PROBATE (1).

**pro omni alio onere** (proh om-ni [also -nee] ay-lee-oh on-ar-ee). [Law Latin "for every other burden"] *Hist.* A portion of a charter clause restricting the vassal's duties to those explicitly named in the charter.

**pro opere et labore** (proh op-a-ree et la-bor-ee). [Latin] For work and labor.

**propaganda.** *Int'l law.* 1. The systematic dissemination of doctrine, rumor, or selected information to promote or injure a particular doctrine, view, or cause. 2. The ideas or information so disseminated. • The word *propaganda* originated as an abbreviated form of *Congregatio de propaganda fide*, a committee (of cardinals) for propagating the (Christian) faith.

**defamatory propaganda.** Propaganda used to promote dissatisfaction among a nation's citizens and undermine government authority. • Defamatory propaganda is common in wartime but is also used in peacetime as a means of incitement.

**hostile propaganda.** Propaganda employed by a nation to manipulate the people of another nation to support or oppose their government. — Also termed *ideological aggression*. See *subversive propaganda*.

"Ideological aggression . . . is the spreading of ideas intentionally and deliberately so as to manipulate by symbols controversial attitudes and positions. It is hostile propaganda indulged in by a state directly or vicariously to incite and influence the people of another state so as to maintain or alter the institutions and policies of that state. The campaign of hostile propaganda may emanate from within or without the territory of the victim state and can be carried on by any means of communications." Ann Van Wijnen Thomas & A.J. Thomas, Jr., *The Concept of Aggression in International Law* 84 (1972).

**subversive propaganda.** Propaganda calculated to incite a civil war or revolution. • When the instigator is another nation, it is termed *hostile propaganda* or *ideological aggression*.

**war-mongering propaganda.** Propaganda calculated to produce national support for a war and to encourage the government to declare or join in a war regardless of any legal constraints.

**pro parte** (proh pahr-tee). [Latin] *Hist.* Partly; in part.

**pro parte legitimus, pro parte illegitimus** (proh pahr-tee la-jit-ə-mas, proh pahr-tee il-la-jit-ə-mas). [Law Latin] *Hist.* Partly legitimate, partly illegitimate. • In Roman and civil law, an illegitimate child could be later legitimated through the marriage of the child's parents. But England did not fully recognize this legitimate status. —

**pro parte virili** (proh pahr-tee və-ri-li). [Latin "for the share per man"] *Hist.* In equal shares; for one's own proportion.

**pro partibus liberandis** (proh pahr-ti-bəs lib-ə-ran-dis). [Latin "to free the portions"] *Hist.* A writ for the partition of lands among coheirs.

**propatrius** (proh-pay-troo-əs or -pa-troo-əs). [Latin] *Roman & civil law.* A great-grandfather's brother.

**propatrius magnus** (proh-pay-troo-əs [or -pa-troo-əs] mag-nas). [Latin] *Roman & civil law.* A great-great-great-uncle.

**proper**, *adv.* & *adj.* See PRO PERSONA.

**proper**, *n.* 1. PRO SE. 2. PROPRIA PERSONA.

**proper care.** See reasonable care under CARE.

**proper evidence.** See admissible evidence under EVIDENCE.

**proper feud.** See FEUD (1).

**proper improbation.** See IMPROBATION.

**proper independent advice.** See INDEPENDENT ADVICE.

**proper law.** *Conflict of laws.* The substantive law that, under the principles of conflict of laws, governs a transaction. [Cases: Action 17. C.J.S. *Actions* §§ 18-20; *Conflict of Laws* §§ 2-3, 12, 15, 20, 23, 27-32, 34-40, 42-48, 50-65, 96-97, 100, 102, 105-107.]

**proper lookout.** 2. The duty of a vehicle operator to exercise caution to avoid collisions with pedestrians or other vehicles. [Cases: Automobiles 150. C.J.S. *Motor Vehicles* §§ 568-571, 573.]

**proper means.** *Trade secrets.* Any method of discovering trade secrets that does not violate property-protection statutes or standards of commercial ethics. • Proper means include independent invention, reverse engineering, observing the product in public, and studying published literature. Restatement (Second) of Torts § 757 cmt. f (1977).

"Trade secrets are protected . . . in a manner akin to private property, but only when they are disclosed or used through improper means. Trade secrets do not enjoy the absolute monopoly afforded patented processes, for example, and trade secrets will lose their character as private property when the owner divulges them or when they are discovered through proper means. . . . Thus, it is the employment of improper means to produce the trade secret, rather than mere copy or use, which is the basis of liability." *Chicago Lock Co. v. Fanberg*, 676 F.2d 400, 404 (9th Cir. 1982).

**proper party.** See PARTY (2).

**pro persona** (proh pər-soh-nə), *adv.* & *adj.* [Latin] For one's own person; on one's own behalf <a *pro persona* brief>. — Sometimes shortened to *pro per*. See PRO SE.

**property.** 1. The right to possess, use, and enjoy a determinate thing (either a tract of land or a chattel); the right of ownership <the institution of private property is protected from undue governmental interference>. — Also termed *bundle of rights*. [Cases: Constitutional Law 277; Property 1. C.J.S. *Constitutional Law* § 982; *Property* § 2-10, 13.] 2. Any external thing over which the rights of possession, use, and enjoyment are exercised <the airport is city property>. [Cases: *Property* 1. C.J.S. *Property* §§ 2-10, 13.]

"In its widest sense, property includes all a person's legal rights, of whatever description. A man's property is all that is his in law. This usage, however, is obsolete at the present

**reliance** may serve as a substitute for consideration and thus make a promise enforceable as a contract. See *promissory estoppel* under ESTOPPEL. [Cases: Estoppel 255, 85, 87. C.J.S. *Estoppel* §§ 85-86, 90, 92-93.]

**reliance damages.** See DAMAGES.

**reliance interest.** See INTEREST (2).

**reliance-loss damages.** See DAMAGES.

**reliance materials.** See EXPERT-RELIANCE MATERIALS.

**relict** (rel-ikt). *Archaic.* 1. A widow. 2. A surviving spouse.

**relicta verificatione** (ri-lik-tə ver-ə-fi-kay-shee-oh-nee). [Latin "his pleading being abandoned"] *Hist.* A confession of judgment accompanied by a withdrawal of the plea. See COGNOVIT ACTIONEM.

**relocation** (ri-lik-shən). 1. A process by which a river or stream shifts its location, causing the recession of water from its bank. [Cases: Navigable Waters 24; Waters and Water Courses 93. C.J.S. *Navigable Waters* § 94; *Waters* §§ 177-182, 184-185.] 2. The alteration of a boundary line because of the gradual removal of land by a river or stream. See ACCRETION; DERELICTION (2). [Cases: Navigable Waters 24; Waters and Water Courses 93. C.J.S. *Navigable Waters* § 94; *Waters* §§ 177-182, 184-185.]

**relief.** 1. A payment made by an heir of a feudal tenant to the feudal lord for the privilege of succeeding to the ancestor's tenancy.

"A mesne lord could, upon the death of his tenant, accept the tenant's heir as tenant; but he was not required to do so. When he did accept his deceased tenant's heir as tenant, it was typically because the heir had paid the mesne lord a substantial sum (known as a *relief*) for the re-grant of the tenancy." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 8 (2d ed. 1984).

2. Aid or assistance given to those in need, esp., financial aid provided by the state. [Cases: Social Security and Public Welfare 24. C.J.S. *Social Security and Public Welfare* §§ 6, 10, 17.] 3. The redress or benefit, esp. equitable in nature (such as an injunction or specific performance), that a party asks of a court. — Also termed *remedy*. Cf. REMEDY.

**affirmative relief.** The relief sought by a defendant by raising a counterclaim or cross-claim that could have been maintained independently of the plaintiff's action.

**alternative relief.** Judicial relief that is mutually exclusive with another form of judicial relief. • In pleading, a party may request alternative relief, as by asking for both specific performance and damages that would be averted by specific performance. Fed. R. Civ. P. 8(a). Cf. ELECTION OF REMEDIES. [Cases: Specific Performance 127. C.J.S. *Specific Performance* §§ 194-196, 198-199.]

**coercive relief.** Judicial relief, either legal or equitable, in the form of a personal command to the defendant that is enforceable by physical restraint.

**interim relief.** Relief that is granted on a preliminary basis before an order finally disposing of a request for relief.

**therapeutic relief.** The relief, esp. in a settlement, that requires the defendant to take remedial mea-

## remainder

sures as opposed to paying damages. • An example is a defendant-corporation (in an employment-discrimination suit) that agrees to undergo sensitivity training. — Often shortened to *therapeutics*.

**religion.** A system of faith and worship usu. involving belief in a supreme being and usu. containing a moral or ethical code; esp., such a system recognized and practiced by a particular church, sect, or denomination. • In construing the protections under the Establishment Clause and the Free Exercise Clause, courts have interpreted the term *religion* quite broadly to include a wide variety of theistic and nontheistic beliefs. [Cases: Religious Societies 1. C.J.S. *Religious Societies* §§ 2-5, 7-13.]

**state religion.** A religion promoted, taught, or enforced by a government's acts to the exclusion of other religions.

**religion, freedom of.** See FREEDOM OF RELIGION.

**Religion Clause.** In the Bill of Rights, the provision stating that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." U.S. Const. amend. I. • Some writers use the plural form, "Religion Clauses," to mean both the Establishment Clause and the Free Exercise Clause, thus emphasizing the asserted common purpose of the two provisions. [Cases: Constitutional Law 84. C.J.S. *Constitutional Law* §§ 513-517.]

**religious corporation.** See CORPORATION.

**religious-exemption statute.** See FAITH-HEALING EXEMPTION.

**religious liberty.** See LIBERTY.

**Religious Test Clause.** The clause of the U.S. Constitution that prohibits the use of a religious test as a qualification to serve in any office or public trust. U.S. Const. art. VI, par. 3, cl. 2. — Also termed *No Religious Test Clause*.

**relinquishment, n.** The abandonment of a right or thing. — *relinquish, vb.*

**reliquia** (rel-ə-kwə). [Latin] *Civil law.* The remainder of a debt after balancing or liquidating an account; money left unpaid.

**relitigate, vb.** To litigate (a case or matter) again or anew <relitigate the issue in federal court>. — *relitigation, n.*

**relocatio** (ree-loh-kay-shee-oh). [Latin] *Civil law.* The renewal of a lease; RECONDUCTION (1).

**relocation.** 1. Removal and establishment of someone or something in a new place. 2. *Mining law.* Appropriation of a new tract of land for a mining claim, as by an owner who wishes to change the boundaries of the original tract or by a stranger who wishes to claim an abandoned or forfeited tract. [Cases: Mines and Minerals 26. C.J.S. *Mines and Minerals* §§ 101-107.] 3. *Civil law.* RECONDUCTION (1).

**rem.** See IN REM.

**remainder.** *Property.* 1. A future interest arising in a third person — that is, someone other than the estate's creator, its initial holder, or the heirs of either — who is intended to take after the natural

termination of the preceding estate. • For example, if a grant is "to A for life, and then to B," B's future interest is a remainder. If there is only one preceding estate and the remainder vests on that estate's expiration, the remainder is also termed an *executed estate*. — Also termed *remainder estate; estate in remainder*. Cf. EXECUTORY INTEREST; REVERSION; POSSIBILITY OF REVERTER. [Cases: Remainders ☞1. C.J.S. Estates §§ 70-71, 77, 79, 81-82.]

"Whether a remainder is vested or contingent depends upon the language employed. If the conditional element is incorporated into the description of, or the gift to the remainder-man, then the remainder is contingent; but if, after words giving a vested interest, a clause is added divesting it, the remainder is vested. Thus, on a devise to A. for life, remainder to his children, but if any child dies in the lifetime of A. his share to go to those who survive, the share of each child is vested, subject to be divested by his death. But on a devise to A. for life, remainder to such of his children as survive him, the remainder is contingent." John Chipman Gray, *The Rule Against Perpetuities* 66 (1886).

"Under the names of 'remainders' and 'executory limitations,' various classes of interests in land could be created in expectancy, either at the Common Law or under the Statute of Uses. The differences between the two classes were highly technical; and the learning involved in acquiring a knowledge of the rules of determining them [is] quite out of proportion to the value obtained." Edward Jenks, *The Book of English Law* 263 (P.B. Fairest ed., 6th ed. 1967).

**accelerated remainder.** A remainder that has passed to the remainderman, as when the gift to the preceding beneficiary fails. [Cases: Remainders ☞5. C.J.S. Estates §§ 77, 80.]

**alternative remainder.** A remainder in which the disposition of property is to take effect only if another disposition does not take effect.

**charitable remainder.** A remainder, usu. from a life estate, that is given to a charity; for example, "to Jane for life, and then to the American Red Cross." [Cases: Internal Revenue ☞4172(3); Taxation ☞876. C.J.S. *Internal Revenue* § 532; *Taxation* §§ 1876-1878.]

**contingent remainder.** A remainder that is either given to an unascertained person or made subject to a condition precedent. • An example is "to A for life, and then, if B has married before A dies, to B." — Also termed *executory remainder; remainder subject to a condition precedent*. [Cases: Remainders ☞1, 4. C.J.S. Estates §§ 70-77, 79, 81-82, 88.]

"Unlike a vested remainder, a contingent remainder is either subject to a condition precedent (in addition to the natural expiration of a prior estate), or owned by unascertainable persons, or both. But the contingent remainder, like the vested remainder, 'waits patiently' for possession. It is so created that it can become a present estate (if ever it does) immediately upon, and no sooner than, the natural expiration of particular estates that stand in front of it and were created simultaneously with it." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 73 (2d ed. 1984).

**cross-remainder.** A future interest that results when particular estates are given to two or more persons in different parcels of land, or in the same land in undivided shares, and the remainders of all the estates are made to vest in the survivor or survivors. • Two examples of devises giving rise to cross-remainders are (1) "to A and B for life, with the remainder to the survivor and her heirs," and (2) "Blackacre to A and Whiteacre to B, with the remainder of A's estate to B on A's failure of issue,

and the remainder of B's estate to A on B's failure of issue." • If no tenants or issue survive, the remainder vests in a third party (sometimes known as the *ulterior remainderman*). Each tenant in common has a reciprocal, or *cross*, remainder in the share of the others. This type of remainder could not be created by deed unless expressly stated. It could, however, be implied in a will. [Cases: Remainders ☞1. C.J.S. Estates §§ 70-71, 77, 79, 81-82.]

"By a will also an estate may pass by mere implication, without any express words to direct its course. . . . So also, where a devise of black-acre to A and of white-acre to B in tail, and if they both die without issue, then to C in fee: here A and B have *cross remainders* by implication, and on the failure of either's issue, the other or his issue shall take the whole; and C's remainder over shall be postponed till the issue of both shall fail." 2 William Blackstone, *Commentaries on the Laws of England* 381 (1766).

**defeasible remainder.** A vested remainder that will be destroyed if a condition subsequent occurs. • An example is "to A for life, and then to B, but if B ever sells liquor on the land, then to C." — Also termed *remainder subject to divestment*. [Cases: Remainders ☞10. C.J.S. Estates §§ 88-89, 91-92.]

**executed remainder.** See *vested remainder*.

**executory remainder.** See *contingent remainder*.

**indefeasible remainder.** A vested remainder that is not subject to a condition subsequent; specific, a remainder in which the remainderman is certain to acquire a present interest sometime in the future and will be entitled to retain the interest permanently. — Also termed *indefeasibly vested remainder; remainder indefeasibly vested*.

**remainder subject to a condition precedent.** See *contingent remainder*.

**remainder subject to divestment.** See *defeasible remainder*.

**remainder subject to open.** A vested remainder that is given to a class of persons whose numbers may change over time and that is to be shared equally by each member of the class. • An example is "to A for life, and then equally to all of B's children." The class must have at least one member, but more can be added over time. — Also termed *remainder subject to partial divestment; remainder vested subject to open*.

**vested remainder.** A remainder that is given to an ascertained person and that is not subject to a condition precedent. • An example is "to A for life, and then to B." — Also termed *executed remainder*. [Cases: Remainders ☞1. C.J.S. Estates §§ 70-71, 77, 79, 81-82.]

2. The property in a decedent's estate that is not otherwise specifically devised or bequeathed in a will. See *residuary estate* under ESTATE (3). [Cases: Wills ☞586. C.J.S. *Wills* §§ 1176-1179, 1184.]

**remainder bequest.** See *residuary bequest* under BEQUEST.

**remainderer.** See REMAINDERMAN.

**remainder estate.** See REMAINDER (1).

**remainder indefeasibly vested.** See *indefeasible remainder* under REMAINDER.

**remainder interest.** The property that passes to a beneficiary after the expiration of an intervening income interest. • For example, if a grantor places real estate in trust with income to A for life and remainder to B upon A's death, then B has a remainder interest.

**remaindeman.** A person who holds or is entitled to receive a remainder. — Also termed *remainderer*; *remainderperson*; *remainior*. [Cases: Remainders 1. C.J.S. Estates §§ 70-71, 77, 79, 81-82.]

**ulterior remaindeman.** A third party whose future interest in a property vests only if all the preceding reciprocal interests expire. See *cross-remainder* under REMAINDER.

**remainder subject to partial divestment.** See *remainder subject to open* under REMAINDER.

**remainder vested subject to open.** See *remainder subject to open* under REMAINDER.

**remainior, n.** See REMAINDERMAN.

**remake rights.** *Copyright.* The rights to produce one or more additional movies or screenplays based on what is substantially the same story as is contained in the original movie or screenplay for which the rights have been granted. [Cases: Copyrights and Intellectual Property 38. C.J.S. Copyrights and Intellectual Property §§ 20, 40, 59.]

**remancipate, vb.** To mancipate (a thing or person) again.

**remand (ri-mand also ree-mand), n.** 1. The act or an instance of sending something (such as a case, claim, or person) back for further action. 2. An order remanding a case, claim, or person.

**fourth-sentence remand.** In a claim for social-security benefits, a court's decision affirming, reversing, or modifying the decision of the Commissioner of Social Security. • This type of remand is called a fourth-sentence remand because it is based on the fourth sentence of 42 USCA § 405(g): "The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing." See *Melkonyan v. Sullivan*, 501 U.S. 89, 111 S.Ct. 2157 (1991). [Cases: Social Security and Public Welfare 149. C.J.S. Social Security and Public Welfare §§ 82-83.]

**sixth-sentence remand.** In a claim for social-security benefits, a court's decision that the claim should be reheard by the Commissioner of Social Security because new evidence is available, which was not available before, that might change the outcome of the proceeding. • This type of remand is called a sixth-sentence remand because it is based on the sixth sentence of 42 USCA § 405(g): "The court may, on motion of the Commissioner of Social Security made for good cause shown before the Commissioner files the Commissioner's answer, remand the case to the Commissioner of Social Security for further action by the Commissioner of Social Security, and it may at any time order additional evidence to be taken before the Commissioner of Social Security, but only upon a showing that there is new evidence which is material

and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding ...." See *Melkonyan v. Sullivan*, 501 U.S. 89, 111 S.Ct. 2157 (1991). [Cases: Social Security and Public Welfare 149. C.J.S. Social Security and Public Welfare §§ 82-83.]

**remand (ri-mand), vb.** 1. To send (a case or claim) back to the court or tribunal from which it came for some further action <the appellate court reversed the trial court's opinion and remanded the case for new trial>. Cf. REMOVAL (2). [Cases: Administrative Law and Procedure 817; Appeal and Error 1186-1216; Federal Courts 937, 943; Removal of Cases 1078]. C.J.S. *Appeal and Error* §§ 968-1010; *Public Administrative Law and Procedure* §§ 254-255; *Removal of Causes* § 192.] 2. To recommit (an accused person) to custody after a preliminary examination <the magistrate, after denying bail, remanded the defendant to custody>.

**remenantia (rem-a-nen-shee-a).** [Law Latin] *Hist.* A remainder or perpetuity.

**remenant pro defectu emptorum (rem-a-nent proh di-fek-t(y)oo emp-tor-am).** [Latin] *Hist.* Remains unsold for want of buyers. • This language was used in a return of a writ of execution when the sheriff could not sell the seized property. [Cases: Execution 334. C.J.S. Executions §§ 324-325.]

**remanet (rem-a-net).** 1. A case or proceeding whose hearing has been postponed. 2. A remainder or remnant.

**remargining, n.** *Securities.* The act or process of depositing additional cash or collateral with a broker when the equity in a margin account falls to an insufficient level. See *margin account* under ACCOUNT. — **remargin, vb.**

**remarry, vb.** To marry a second or later time, after a divorce or the death of one's spouse.

**remediable, adj.** Capable of being remedied, esp. by law <remediable wrongs>. — **remediability, n.**

**remedial, adj.** 1. Affording or providing a remedy; providing the means of obtaining redress. <a remedial action>. 2. Intended to correct, remove, or lessen a wrong, fault, or defect <a remedial statute>. 3. Of or relating to a means of enforcing an existing substantive right <a remedial right>.

**remedial action.** 1. *Environmental law.* An action intended to bring about or restore long-term environmental quality; esp., under CERCLA, a measure intended to permanently alleviate pollution when a hazardous substance has been released or might be released into the environment, so as to prevent or minimize any further release of hazardous substances and thereby minimize the risk to public health or to the environment. 42 USCA § 9601(24); 40 CFR § 300.6. — Also termed *remedy*. See CERCLA. Cf. REMOVAL ACTION. [Cases: Environmental Law 441.] 2. See *personal action* (1) under ACTION (4).

**remedial enforcement.** See *secondary right* under RIGHT.

**remedial law.** 1. A law providing a means to enforce rights or redress injuries. 2. A law passed to correct or modify an existing law; esp., a law that gives a

tions  $\Leftrightarrow$ 49. C.J.S. *Motions and Orders* §§ 56, 58;—  
resettle, *vb.*

*res fit inempta* (rays fit in-emp-tə). [Latin] *Hist.* The object is regarded as unbought. • This is the ancient way of saying, "The sale is off."

*res fungibles* (rays fən-jib-ə-leez), *n. pl.* [Latin] *Civil law.* Fungible things; things that are commercially interchangeable.

*res gestae* (rays jes-tee also jes-ti), *n. pl.* [Latin "things done"] The events at issue, or other events contemporaneous with them. • In evidence law, words and statements about the *res gestae* are usu. admissible under a hearsay exception (such as present sense impression or excited utterance). Where the Federal Rules of Evidence or state rules fashioned after them are in effect, the use of *res gestae* is now out of place. See Fed. R. Evid. 803(1), (2). — Also termed *res gesta*. [Cases: *Criminal Law*  $\Leftrightarrow$ 363-368; *Evidence*  $\Leftrightarrow$ 118-128. C.J.S. *Criminal Law* §§ 454, 831, 867-876; *Evidence* §§ 342-363.]

"The Latin expression '*res gestae*' or '*res gesta*,' literally 'things done' or 'thing transacted,' has long served as a catchword . . . [T]he phrase has frequently served both to let in utterances which in strictness were not admissible and to exclude utterances which might well have been admitted. And frequently also its indefiniteness has served as a basis for rulings where it was easier for the judge to invoke this imposing catchword than to think through the real question involved. The phrase is antiquated. By modern judges it is being gradually discarded. It is superfluous, and serves only to obscure the logic of the rules. It should be left to oblivion." John H. Wigmore, *A Students' Textbook of the Law of Evidence* 279 (1935).

"The *res gestae* embraces not only the actual facts of the transaction and the circumstances surrounding it, but the matters immediately antecedent to and having a direct causal connection with it, as well as acts immediately following it and so closely connected with it as to form in reality a part of the occurrence." *State v. Fouquette*, 221 P.2d 404, 416-17 (Nev. 1950).

*res gestae witness.* See *WITNESS*.

*res habiles* (rays hab-ə-leez), *n. pl.* [Latin] *Civil law.* Things that may be acquired by prescription.

*residence* (rez-ee-ənts). *Archaic.* Residence; abode.

*resitant* (rez-ee-ənt), *adj. Archaic.* Continually dwelling or abiding in a place; resident.

*resiant*, *n. Archaic.* A resident.

*residence*. 1. The act or fact of living in a given place for some time <a year's residence in New Jersey>. 2. The place where one actually lives, as distinguished from a *domicile* <she made her residence in Oregon>. • *Residence* usu. just means bodily presence as an inhabitant in a given place; *domicile* usu. requires bodily presence plus an intention to make the place one's home. A person thus may have more than one residence at a time but only one *domicile*. Sometimes, though, the two terms are used synonymously. Cf. *DOMICILE* (2). [Cases: *Domicile*  $\Leftrightarrow$ 2. C.J.S. *Domicile* § 4.] 3. A house or other fixed abode; a dwelling <a three-story residence>. 4. The place where a corporation or other enterprise does business or is registered to do business <Pantheon Inc.'s principal residence is in Delaware>. [Cases: *Corporations*  $\Leftrightarrow$ 52, 503(1), 666. C.J.S. *Corporations* §§ 107-109, 717, 886, 937, 948-949.]

*habitual residence*: 1. *Family law.* A person's customary place of residence; esp., a child's customary place of residence before being removed to some other place. • The term, which appears as an undefined term in the Hague Convention, is used in determining the country having a presumed paramount interest in the child. 2. *Copyright.* An established place, esp. a country, in which one lives for the long term, usu. without being a citizen of the place. • The Berne Convention makes habitual residence an alternative to legal domicile in a member country to qualify for copyright protection but leaves the exact definition of the term to member countries.

*residency*. 1. A place of residence, esp. an official one <the diplomat's residency>. 2. *RESIDENCE* (1) <one year's residency to be eligible for in-state tuition>.

*resident*, *adj.* 1. Affiliated with or working for a particular person or company <resident agent>. 2. Dwelling in a place other than one's home on a long-term basis <the hospital's resident patient>.

*resident*, *n.* 1. A person who lives in a particular place. 2. A person who has a home in a particular place. • In sense 2, a resident is not necessarily either a citizen or a domiciliary. Cf. *CITIZEN* (1); *DOMICILIARY*.

*resident agent.* See *registered agent* under *AGENT* (2).

*resident alien.* See *ALIEN*.

*resident ambassador.* See *AMBASSADOR*.

*residential care*. *Family law.* Foster-care placement involving residence in a group home or institution. • This type of foster care is most commonly used for adolescents who have been adjudged to be delinquents or status offenders.

*residential cluster*. *Land-use planning.* An area of land developed as a unit with group housing and open common space. Cf. *PLANNED-UNIT DEVELOPMENT*. [Cases: *Zoning and Planning*  $\Leftrightarrow$ 66. C.J.S. *Zoning and Land Planning* § 52.]

*residential community treatment center.* See *HALFWAY HOUSE*.

*residential custody.* See *PHYSICAL CUSTODY* (2).

*residential parent.* See *PARENT*.

*residential responsibility*. Overnight responsibility for a child. See *Principles of the Law of Family Dissolution: Analysis and Recommendations* § 3.02 (2000). See *CUSTODY*; *dual-residential parent*, *residential parent* under *PARENT*.

*primary residential responsibility.* Predominant overnight responsibility for a child.

*residential time.* See *VISITATION* (2).

*residua* (ri-zij-oo-ə). *pl. RESIDUUM.*

*residual*, *adj.* Of, relating to, or constituting a residue; remaining; leftover <a residual claim> <a residual functional disability>.

*residual*, *n.* 1. A leftover quantity; a remainder. 2. (often *pl.*) A disability remaining after an illness, injury, or operation. 3. (usu. *pl.*) A fee paid to a composer or performer for each repeated broadcast (esp. on television) of a film, program, or commercial. [Cases: *Copyrights and Intellectual Property*

**temporary restraining order.** 1. A court order preserving the status quo until a litigant's application for a preliminary or permanent injunction can be heard. • A temporary restraining order may sometimes be granted without notifying the opposing party in advance. Cf. *emergency protective order* under PROTECTIVE ORDER. [Cases: *Injunction* 150. C.J.S. *Injunctions* §§ 10, 16, 168, 189, 245.] 2. See *ex parte injunction* under INJUNCTION. — Abbr. TRO. — Often shortened to *restraining order*.

**temporary statute.** See STATUTE.

**temporary taking.** See TAKING (2).

**temporary total disability.** See DISABILITY (2).

**temporary ward.** See WARD.

**tempus** (tem-pas), *n.* [Latin] *Hist.* Time; a specified duration.

**tempus continuum** (tem-pas kən-tin-yoo-əm), *n.* [Latin] *Hist.* Time continuing without interruption; a continuous period.

**tempus deliberandi** (tem-pas di-lib-ə-ran-di), *n.* [Latin] *Hist.* The period allowed for deliberation; esp., the time during which an heir could consider whether to accept or reject an inheritance. Cf. JUS DELIBERANDI.

**tempus lugendi** (tem-pas loo-gen-di). *n.* See LUCTUS.

**tempus semestre** (tem-pas si-mes-trə), *n.* [Latin] A period of 182 days (half a year).

**tempus utile** (tem-pas yoo-ta-lee), *n.* [Latin "useful time"] *Hist.* Time that one can use to exercise his or her legal rights; the period within which an action or proceeding must be brought. • This is the period before prescription or limitation cuts off a right.

**tenancy.** 1. The possession or occupancy of land under a lease; a leasehold interest in real estate. 2. The period of such possession or occupancy. See ESTATE (1). [Cases: *Landlord and Tenant* 20. C.J.S. *Landlord and Tenant* §§ 27, 202(1, 2, 3, 4, 5, 9, 10), 203.] 3. The possession of real or personal property by right or title, esp. under a conveying instrument such as a deed or will.

**at-will tenancy.** See *tenancy at will*.

**common tenancy.** See *tenancy in common*.

**cotenancy.** A tenancy with two or more coowners who have unity of possession. • Examples are a joint tenancy and tenancy in common. [Cases: *Joint Tenancy* 1; *Tenancy in Common* 1. C.J.S. *Estates* § 19; *Joint Tenancy* §§ 2, 4, 7-9; *Tenancy in Common* §§ 2-5.]

**entire tenancy.** A tenancy possessed by one person, as opposed to a joint or common tenancy. See *estate by entirety* under ESTATE (1).

**general tenancy.** A tenancy that is not of fixed duration under the parties' agreement. [Cases: *Landlord and Tenant* 114(3). C.J.S. *Landlord and Tenant* § 136(1, 2, 3, 4, 5).]

**holdover tenancy.** See *tenancy at sufferance*.

**joint tenancy.** A tenancy with two or more coowners who take identical interests simultaneously by

the same instrument and with the same right of possession. • A joint tenancy differs from a tenancy in common because each joint tenant has a right of survivorship to the other's share (in some states, this right must be clearly expressed in the conveyance — otherwise, the tenancy will be presumed to be a tenancy in common). See RIGHT OF SURVIVORSHIP. Cf. *tenancy in common*. [Cases: *Joint Tenancy* 1. C.J.S. *Estates* § 19; *Joint Tenancy* §§ 2, 4, 7-9.]

"The rules for creation of a joint tenancy are these: The joint tenants must get their interests at the same time. They must become entitled to possession at the same time. The interests must be physically undivided interests, and each undivided interest must be an equal fraction of the whole — e.g., a one-third undivided interest to each of three joint tenants. The joint tenants must get their interests by the same instrument — e.g., the same deed or will. The joint tenants must get the same kinds of estates — e.g., in fee simple, for life, and so on." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 55 (2d ed. 1984).

**life tenancy.** See *life estate* under ESTATE (1).

**periodic tenancy.** A tenancy that automatically continues for successive periods — usu. month to month or year to year — unless terminated at the end of a period by notice. • A typical example is a month-to-month apartment lease. This type of tenancy originated through court rulings that, when the lessor received a periodic rent, the lease could not be terminated without reasonable notice. — Also termed *tenancy from period to period*; *periodic estate*; *estate from period to period*; (more specif.) *month-to-month tenancy* (or *estate*); *year-to-year tenancy* (or *estate*). [Cases: *Intoxicating Liquors* 160; *Landlord and Tenant* 114, 115. C.J.S. *Intoxicating Liquors* § 257; *Landlord and Tenant* §§ 132, 137, 146.]

**several tenancy.** A tenancy that is separate and not held jointly with another person.

**tenancy at sufferance.** A tenancy arising when a person who has been in lawful possession of property wrongfully remains as a holdover after his or her interest has expired. • A tenancy at sufferance takes the form of either a tenancy at will or a periodic tenancy. — Also termed *holdover tenancy*; *estate at sufferance*. See HOLDING OVER. [Cases: *Landlord and Tenant* 119, 120. C.J.S. *Landlord and Tenant* §§ 167-168, 172, 175-176, 182.]

"A tenancy at sufferance arises where a tenant, having entered upon land under a valid tenancy, holds over without the landlord's assent or dissent. Such a tenant differs from a trespasser in that his original entry was lawful, and from a tenant at will in that his tenancy exists without the landlord's assent. No rent, as such, is payable, but the tenant is liable to pay compensation for his use and occupation of the land. The tenancy may be determined [i.e., terminated] at any time, and may be converted into a yearly or other periodic tenancy in the usual way, e.g., if rent is paid and accepted with reference to a year in circumstances where the parties intended there to be a tenancy." Robert E. Megarry & M.P. Thompson, *A Manual of the Law of Real Property* 319 (6th ed. 1993).

**tenancy attendant on the inheritance.** A tenancy for a term that is vested in a trustee in trust for the owner of the inheritance. • The tenancy is a form of personal property to the trustee. — Also termed *tenancy attendant on an inheritance*; *term attendant on the inheritance*.

**tenancy at will.** A tenancy in which the tenant holds possession with the landlord's consent but without fixed terms (as for duration or rent); specif., a tenancy that is terminable at the will of either the transferor or the transferee and that has no designated period of duration. • Such a tenancy may be terminated by either party upon fair notice. — Also termed *at-will tenancy; estate at will*. [Cases: *Landlord and Tenant* 118, 120. C.J.S. *Landlord and Tenant* §§ 157, 166–168, 172, 182.]

**tenancy by the entirety** (en-ti-ər-tee). See *estate by entirety* under **ESTATE** (1). [Cases: *Husband and Wife* 14.2–14.11.]

"Tenancy by the entirities is a form of joint tenancy. It resembles joint tenancy in that upon the death of either husband or wife the survivor automatically acquires title to the share of the deceased spouse. Like a joint tenancy, also, it is necessary for the creation of a tenancy by the entirities that the husband and wife acquire title by the same deed or will." Robert Kratovil, *Real Estate Law* 198 (6th ed. 1974).

"Where [tenancy by the entirety] is recognized, it may exist only between a husband and a wife. It resembles, in most respects, the joint tenancy. The only major difference is that a tenant by the entirety may not destroy the other spouse's right of survivorship by transferring his or her interest to another. Whether a tenant by the entirety may transfer *any* interest to a third party — for example, the right of present possession or the contingent right of survivorship — is a matter on which the states differ. Most take the view that no interest may be transferred. The husband and wife may, of course, together convey their estate to a third person. If they *both* wish to convert their tenancy into a tenancy in common or a joint tenancy, they may do so. Upon the death of a tenant by the entirety, no interest passes, in theory, to the surviving spouse. As was true of the joint tenancy, the survivor's ownership is thought simply to expand to absorb the relinquished ownership of the decedent." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 55 (2d ed. 1984).

"A tenancy by the entirities could exist in any estate, whether in fee, for life, for years or otherwise. The nature of the tenancy was virtually that of an unseverable joint tenancy; neither husband nor wife could dispose of any interest in the land without the concurrence of the other, nor could one of them cause a forfeiture of the land. The united of husband and wife was regarded as so complete that they were said to be seised '*per tout et non per mie*,' the survivor being entitled to the whole of the land by force of the original limitation, discharged of the other's right to participate, and not, as in the case of joint tenancy, by virtue of survivorship on the death of the other tenant. Unlike joint tenants, neither tenant was regarded as having any potential share in the land; 'between husband and wife there are no moieties.'" Robert E. Megarry & P.V. Baker, *A Manual of the Law of Real Property* 232–33 (4th ed. 1969) (quoting *Marquis of Winchester's Case*, 3 Co. Rep. 1a, 5a (1583)).

**tenancy by the rod.** See **COPYHOLD**.

**tenancy by the verge.** See **COPYHOLD**.

**tenancy for a term.** A tenancy whose duration is known in years, weeks, or days from the moment of its creation. — Also termed *tenancy for a period; tenancy for years; term for years; term of years; estate for a term; estate for years; lease for years*. [Cases: *Landlord and Tenant* 113–116. C.J.S. *Landlord and Tenant* §§ 130(1, 2), 131–135, 136(1, 2, 3, 4, 5), 137–141, 143, 145–148, 151–155.]

**tenancy from period to period.** See *periodic tenancy*.

**tenancy in common.** A tenancy by two or more persons, in equal or unequal undivided shares, each person having an equal right to possess the whole property but no right of survivorship. — Also termed *common tenancy; estate in common*.

[Cases: *Tenancy in Common* 1. C.J.S. *Estates* § 19; *Tenancy in Common* §§ 2–5.]

"The central characteristic of a tenancy in common is simply that each tenant is deemed to own by himself, with most of the attributes of independent ownership, a physically undivided part of the entire parcel." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 54 (2d ed. 1984).

**tenancy in coparcenary.** See **COPARCENARY**.

**tenancy in fee.** See **FEESIMPLE**.

**tenancy in gross.** A tenancy for a term that is outstanding — that is, one that is unattached to or disconnected from the estate or inheritance, such as one that is in the hands of some third party having no interest in the inheritance.

**tenancy in tail.** See **FEETAIL**.

**tenancy par la verge.** See **COPYHOLD**.

**year-to-year tenancy.** See *periodic tenancy*.

**tenant.** n. 1. One who holds or possesses lands or tenements by any kind of right or title. See **TENANCY**. [Cases: *Landlord and Tenant* 1. C.J.S. *Landlord and Tenant* §§ 1, 2(1, 2), 6(1), 7, 202(5).]

**copyhold tenant.** See *customary tenant*.

**customary tenant.** A tenant holding by the custom of the manor. • Over time, customary tenants became known as *copyhold tenants*. See **COPYHOLD**.

"The lord has a court; in that court the tenant in villeinage, even though he be personally unfree, appears as no mere tenant at will, but as holding permanently, often heritably, on fairly definite terms. He is a customary tenant, *customarius, consuetudinarius*; he holds according to the custom of the manor.... Then gradually ... [d]ealings with villein tenements are set forth upon the rolls of the lord's court; the villein tenement is conceived to be holden 'by roll of court,' or even 'by copy of court roll,' and the mode of conveyance serves to mark off the most beneficial of villeinholds from the most onerous of freeholds .... In Henry III's time this process which secured for the tenant in villeinage a written, a registered title, and gave him the name of 'copyholder,' was but beginning...." 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 361, 375 (2d ed. 1899).

**dominant tenant.** The person who holds a dominant estate and therefore benefits from an easement. Cf. *servient tenant*. [Cases: *Easements* 2. C.J.S. *Easements* §§ 6, 21, 53–55.]

**holdover tenant.** A person who remains in possession of real property after a previous tenancy (esp. one under a lease) expires, thus giving rise to a tenancy at sufferance. — Sometimes shortened to *holdover*. See *tenancy at sufferance* under **TENANCY**. [Cases: *Landlord and Tenant* 114(3). C.J.S. *Landlord and Tenant* § 136(1, 2, 3, 4, 5).]

**hypothetical tenant.** See *HYPOTHETICAL TENANT*.

**illusory tenant.** 1. A fictitious person who, as the landlord's alter ego, subleases an apartment to permit the landlord to circumvent rent-law regulations. 2. A tenant whose business is to sublease rent-controlled apartments. [Cases: *Landlord and Tenant* 200.16. C.J.S. *Landlord and Tenant* § 554.11.]

**joint tenant.** See *joint tenancy* under **TENANCY**.

**life tenant.** See **LIFETENANT**.

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